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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES (SANTA ANA)

Date:

FEB 25 2010

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot. The matter will be returned to the district director for continued processing.

The record reflects that the applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated April 18, 2007.

On appeal, counsel contends that the applicant did not commit fraud or willfully misrepresent a material fact and that he is, therefore, not inadmissible.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In this case, the record shows that the applicant entered the United States three times. The applicant contends his first entry was in October 2002 as a visitor; according to United States Citizenship and Immigration Services (USCIS) records, the applicant departed the United States for Canada on September 30, 2002. The applicant contends he entered the United States a second time as a visitor in late July 2003; according to USCIS records, he departed the country on August 2, 2003. The applicant attempted to enter the country for the third time as a visitor on August 18, 2003, but was denied admission pre-flight in Toronto, Canada. After being denied admission, the applicant entered the United States as a visitor at Buffalo, New York, in August 2003. He remained in the United States and married a U.S. citizen in April 2006. On July 11, 2006, the applicant's wife filed a Petition for Alien Relative (Form I-130) on his behalf and the applicant concurrently filed an Application to Adjust Status (Form I-485).

The applicant attended an adjustment of status interview in October 2006 and was questioned about his 2003 entry. The applicant stated he was refused entry at Toronto in 2003 “[b]ecause [he] had [his] dates confused as to when [he] last entered the country.” The applicant stated he “d[id] not recall” whether the immigration inspector had asked him whether he lived in California, but claimed

that he told the inspector he was “coming into Buffalo for the day with [his] parents so that they could drive [him] to the Airport so that [he] could then come to Orange County, California.” When the applicant was asked whether he knew at the time that he was coming to the United States to live, the applicant responded, “Yes, I was planning on it[, but I] was not sure if I was going to stay.” The applicant stated he already had a California identification card and a Wells Fargo bank card when he entered the United States in 2003 because “since [he] was visiting, [he] had an account so if [he] need[ed] to access money[, he] would have an American bank account.” The applicant stated that his 2003 entry “was 3 or 4 years ago [and that he did] not remember the dates.” *Record of Sworn Statement*, dated October 23, 2006.

The immigration officer found that the applicant misrepresented the purpose of his entry in August 2003 in Buffalo, New York, concluding that the applicant entered the country in order to resume his California residency. Specifically, the immigration officer found the applicant inadmissible because he “entered the United States using [his] Birth Certificate and Canadian Driver’s License, after [he was] denied admission at Toronto Pre-Flight, and failed to inform the Immigration Officer that [he was] living in California.” *Form I-72*, dated October 23, 2006.

After a complete review of the record, the AAO concludes that the evidence does not support a finding that the applicant is inadmissible for fraud or willfully misrepresenting a material fact in order to procure an immigration benefit.

There is no evidence in the record indicating that the applicant had taken residency in California prior to his entry in 2003. The applicant’s California identification card and Wells Fargo bank card that were discussed during the applicant’s adjustment interview are not in the record. Furthermore, even assuming the applicant was residing in California prior to his entry in 2003, there is no evidence in the record that shows the applicant willfully misrepresented this fact to the immigration inspector in Buffalo in 2003. Under these circumstances, the evidence does not support the finding that the applicant willfully misrepresented a material fact.

The AAO finds that the district director erred in finding that the applicant willfully misrepresented a material fact. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the district director correctly assessed hardship to the applicant’s spouse under section 212(i) of the Act is moot and will not be addressed.

ORDER: The district director’s decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.